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LISA SAMSKY and  
JENSEN RUFE

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

CALEB MCGILLVARY,  
  
Plaintiff,  
  
vs.

NETFLIX, BUNIM-MURRAY  
PRODUCTIONS, JIMMY KIMMEL  
LIVE!, KMPH FOX NEWS,  
EBAUMSWORLD, FULTON 55,  
RAWTV, COLETTE CAMDEN,  
BRAD MULCAHY, ALEX  
AGUIRRE, CARTER HARRIS, JEFF  
STRIKER, GABRIEL SANCHEZ,  
TONY MARTIN, LISA SAMSKY,  
JENSEN RUFE, SALLE BRINDLE,  
ROB MILLER, JOHN DOE 1-5,

Defendants.

Case No. 2:23-CV-01195-JLS-SK

**LISA SAMSKY’S AND JENSEN  
RUFE’S SUPPLEMENTAL  
MEMORANDUM IN SUPPORT  
OF MOTION TO DISMISS  
PLAINTIFF’S SECOND  
AMENDED COMPLAINT**

Date: May 10, 2024  
Time: 10:30 a.m.  
Dept: Courtroom 8A

**SUPPLEMENTAL MEMORANDUM OF POINTS AND AUTHORITIES**

Pursuant to this Court’s order entered on February 28, 2024 (the “Order”)  
(Doc. 153), Defendants Lisa Samsky and Jensen Ruffe hereby direct their Motion

1 to Dismiss Plaintiff’s First Amended Complaint (Doc. 127) (“Mem.”) to Plaintiff’s  
2 Second Amended Complaint (“SAC”), and submit this Supplemental  
3 Memorandum of Law in further support of that motion and to address the material  
4 changes alleged against them in the SAC.

5 **I. SUPPLEMENTAL ARGUMENT**

6 **A. PLAINTIFF’S CLAIM FOR “CONSPIRACY” IS NOT A**  
7 **CAUSE OF ACTION.**

8 In his SAC, Plaintiff adds a claim for “conspiracy” (Count Six) against the  
9 “Defendants named in [paragraphs] 57–97,” SAC ¶ 139, which include Rufe. *Id.* ¶  
10 84. Under California law, however, conspiracy is not a cause of action. *See*  
11 *Fleites v. MindGeek S.A.R.L.*, 617 F. Supp. 3d 1146, 1167 (C.D. Cal. 2022)  
12 (dismissing conspiracy claim where Plaintiff either “mistakenly pled civil  
13 conspiracy as a standalone tort” or failed “to make clear which tort causes of action  
14 [defendant] allegedly conspired to commit”); *Applied Equip. v. Litton Saudia*  
15 *Arabia*, 7 Cal. 4th 503, 510–11 (Cal. 1994) (“Conspiracy is not a cause of action . .  
16 . Standing alone, a conspiracy does no harm and engenders no tort liability.”).  
17 Thus, Count Six of the SAC should be dismissed with prejudice.

18 **B. PLAINTIFF HAS NOT PLEADED AN AGENCY**  
19 **RELATIONSHIP BETWEEN RUFÉ AND RAWTV.**

20 Plaintiff also appears to assert that Rufe is an agent of defendant RawTV and  
21 jointly liable for his claims against RawTV. SAC ¶¶ 112–15. But the only facts  
22 Plaintiff pleads in support of his agency theory is that Rufe allegedly received  
23 “consideration from RAWTV to perform acts of creating works for hire in the form  
24 of interviews in motion pictures.” *Id.* ¶ 112. In order to establish an agency  
25 relationship a plaintiff must allege: “(1) that the agent or apparent agent holds the  
26 power to alter legal relations between the principal and third persons and between  
27 the principal and himself; (2) that the agent is a fiduciary with respect to matters  
28 within the scope of the agency; and (3) that the principal has the right to control the

1 conduct of the agent with respect to matters entrusted to him.” *Kreiser v. Asset*  
2 *Mgmt. Grp., Inc.*, 2021 WL 3579414, at \*3 (C.D. Cal. Apr. 23, 2021). Here, the  
3 SAC offers no facts in support of any of these elements. Therefore, Plaintiff has  
4 not plausibly pleaded an agency relationship between Rufe and RawTV.<sup>1</sup>

5 **C. THE SAC DOES NOT CURE PLAINTIFF’S FAILURE TO**  
6 **PLEAD A CLAIM FOR VIOLATION OF THE RICO**  
7 **STATUTE.**

8 Plaintiff’s claims against Samsky and Rufe in the SAC for violation of  
9 RICO (Count Forty-Nine and Count Fifty) are substantially similar to the claims in  
10 his FAC and should be dismissed for the same reasons set forth in Samsky and  
11 Rufe’s Motion to Dismiss. Mem. 8–13. To the extent the SAC asserts that  
12 Samsky’s and Rufe’s alleged misrepresentation about their connection to Jimmy  
13 Kimmel constitutes wire fraud, which serves as a RICO predicate act, Plaintiff’s  
14 claim should still be dismissed. *See* SAC ¶¶ 351, 354–57, 369, 372–75. A RICO  
15 claim predicated on wire fraud must satisfy the Rule 9(b) heightened pleading  
16 requirements. *Moore v. Kayport Package Exp., Inc.*, 885 F.2d 531, 541 (9th Cir.  
17 1989); *Rosen v. Duel*, 2023 WL 7475733, at \*3 (C.D. Cal. Mar. 21, 2023). As  
18 Samsky and Rufe have already demonstrated, Plaintiff has failed to satisfy these  
19 pleading standards for his fraud claim. Mem. 5–6. Plaintiff also fails to plead  
20 facts demonstrating that the alleged wire fraud was the proximate cause of any  
21 alleged harm, which is independently fatal to his RICO claim. *See Rosen*, 2023  
22 WL 7475733 at \*4–5 (dismissing RICO claim with prejudice where the allegations  
23 underlying plaintiff’s wire fraud claim were “too far attenuated” from the alleged  
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25 <sup>1</sup> There is also no merit to Plaintiff’s assertion that Delaware law should  
26 apply to his defamation claim against Rufe “[p]ursuant to Cal. Corp. Code  
27 17450(a), or in the alternative, Cal. Corp. Code 11708.01(a).” Section 17450(a)  
28 has been repealed, *see* Stats. 2012, c. 419 (S.B.323), § 19, and section “11708.01”  
is non-existent. To the extent Plaintiff intended to cite to section 17708.01, that  
section merely sets forth the governing law for the internal affairs and member  
liability of a limited liability corporation.

1 issues that ultimately harmed plaintiff). Thus, Plaintiff's RICO claim should be  
2 dismissed with prejudice.

3 **II. CONCLUSION**

4 For all the foregoing reasons, and the reasons set forth in their Motion to  
5 Dismiss Plaintiff's First Amended Complaint, Samsky and Rufe respectfully  
6 request that the Court grant their motion to dismiss the SAC with prejudice, enter  
7 judgment in their favor and against Plaintiff, and afford to them such other and  
8 further relief as the Court may deem just and proper.

9  
10 Dated: March 4, 2024

Respectfully submitted,

11 HOWARD M. RUPP, APLC

12  
13 By: /s/ H. Marc Rupp  
14 Howard M. Rupp

15 CAMERON STRACHER, PLLC

16  
17 By: /s/ Cameron Stracher  
18 Cameron Stracher (*pro hac vice*)

19 Attorneys for Defendants  
20 LISA SAMSKY and JENSEN RUFÉ

**CERTIFICATE OF SERVICE**

I hereby certify that on March 4, 2024, a true copy of the foregoing was served on Plaintiff via U.S. Mail to the address provided in his pleadings:

Caleb L. McGillvary  
#1222655/SBI#102317G  
New Jersey State Prison  
P.O. Box 861  
Trenton, NJ 08625

I further certify that I caused a true copy of the foregoing to be served on all defendants' counsel of record via ECF.

By: /s/ H. Marc Rupp  
Howard M. Rupp